US universities are ignoring the affirmative action ban

BY JOHN MURAWSKI

'Academia has been politically committed to affirmative action for decades.' Credit: Getty

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Newsroom 26 FEBRUARY 2025 - 11:00AM

It hasn't even been two years since the US Supreme Court banned affirmative action in college admissions, but it's becoming increasingly apparent that it won't be long before the hot-button issue returns to court.

While black student enrolment has dropped markedly at many elite universities in the wake of the 2023 ruling — the expected result of banning admissions policies designed to favour African American applicants — the *Atlantic*, the *New York Times* and others have reported that some elite universities have in fact seen an *increase* in black student admissions. And earlier this month, an Asian plaintiff filed a discrimination lawsuit in California after being rejected or waitlisted by 16 out of 18 universities, including five institutions in California, despite his 3.97 Grade Point Average and a near-perfect score of 1590 on the Scholastic Aptitude Test (SAT).

Students for Fair Admissions, the group which challenged affirmative action at the Supreme Court in 2023, has already put select colleges on notice, arguing that their admissions demographics appear too suspicious to be explained by random chance. Still, admissions officers at elite universities have been surprisingly forthcoming on the podcast circuit about their industry secrets. And it all comes down to standardised testing, where African American applicants have long registered lower scores than their peers.

Standardised tests are the best predictors of a student's success in college, admissions officers say, but that doesn't mean what most people assume. In the arcane redoubts of college admissions, standardised tests are not read as raw scores, but are instead interpreted "holistically" and "contextually" based on a host of factors. And these factors can look a lot like proxies for race, especially considering that admissions officers explain their strategies in the context of affirmative action and diversity.

As a Yale admissions officer explained a year ago: "Simply put, the same score can mean two very different things in two very different contexts." Interpreting a score in the context of a student's "background", high school and neighbourhood, "can be a really powerful way to actually increase the diversity of the Yale student body", another

admissions officer explained.

Dartmouth economists calculated the precise benefits of this approach for underprivileged applicants in a paper published last month with the National Bureau of Economic Research. “Less advantaged applicants with scores of 1400 and above can boost their probability of admission by 3.6 times by submitting scores,” the Dartmouth team wrote. “Even well-informed students cannot be expected to know how reading SAT scores in context is operationalised.”

One can assume that critics of such subjective methods will take the same data and recalculate the probabilities to show how they disadvantage white and Asian students. And this time around, the opponents of affirmative action have a powerful ally in Donald Trump. Given his zero-tolerance policy on DEI — notably his Executive Order repealing Lyndon Johnson’s 1965 decree that birthed affirmative action — Trump’s presidency could deliver a major setback to academia’s entrenched activists.

The public will remain unaware of what’s going on behind closed doors in college admissions decisions until a discrimination lawsuit or a federal investigation forces universities to cough up internal memos and emails detailing their procedures. If the universities can show that they are adjusting the standardised test scores of all disadvantaged applicants, regardless of ethnicity, they could succeed in persuading courts that discrimination is not taking place.

It’s clear from the podcast discussions that admissions officers are confident they are not breaking any laws, and they are well-practiced in the nuances of civil rights advocacy. According to a September 2023 podcast, some colleges tout their “diversity fly-in programme” to recruit “diverse” students, insisting that the Supreme Court decision has nothing to do with how students are recruited, only how their application files are read. Some are even adding a question encouraging students to highlight their “lived experience” and their “life journey”.

Academia has been politically committed to affirmative action for decades, and universities have told the Supreme Court that their racial balancing targets can’t be achieved without explicitly weighting race. Academia has devised creative ways to engage in affirmative action, but Trump’s election could prove to be the greatest challenge for race-based — and gender-based — preferences in the past half-century.

Indeed, the way things are going, the new administration might act sooner than Students for Fair Admissions.

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